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# How Can Outside Counsel Contribute to the Evolution of E-discovery?

As the economic marketplace shifts, proactive law firms can surpass the competition by keeping up with e-discovery changes.

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In recent years, the legal industry has witnessed a lot of change in the nature and handling of electronic discovery. A major part of that change has had to do with IT best practices, better information retention, and software solutions continuously evolving to make sense of the enormous growth in stored data, while at the same time, keeping costs in check.

Many of the efficiencies gained during this evolution of e-discovery can be credited to the efforts and innovations of CIOs, in-house counsel, judges and e-discovery software companies. Meanwhile, most of the benefits of this evolution have been passed on to end buyers (mostly large corporations) who foot the bill for expensive e-discovery. And while the efficiencies gained during this process have helped reduce the burden of the end buyers, there is a need for constant improvement to make sure that the benefits gained in the past through these efforts do not taper off or get lost against the growing pressures of cost and big data. This makes outside counsel and law firms well positioned to contribute to the next phase of e-discovery evolution.

So why should outside counsel and law firms be ready to contribute now?

The high-level/broad reason is that lawyers need to be more conscientious of the ever-increasing costs associated with e-discovery and the ultimate impact they have on their clients. Traditionally, e-discovery and document review have been a good source of revenue for law firms, in that [they could bill up to \\$400 per hour for work done by contract attorneys](#) getting paid as low as \$25 per hour. However, with corporations struggling to contain enormous cost pressures, in-house counsel have had to rethink what services they procure from outside counsel and what price they pay for them.

More practically, the ability to charge historic rates for basic e-discovery services is becoming increasingly limited because of recent judgments, such as [Lola v. Skadden, Arps, Slate, Meagher & Flom LLP](#), which have distanced such services from the practice of law. In-house counsel are increasingly taking notice of such judgments and amendments to the Federal Rules of Civil Procedure, and making e-discovery services a focus area to reduce litigation spend. This has also strained the relationship between inside and outside counsel; with outside counsel feeling constrained to create an effective trial strategy under the limited budgets provided to them.

These considerations will play a major role in how e-discovery services are going to be procured and provided in the future. With e-discovery capabilities increasingly becoming a parameter for outside

counsel selection, it is foreseeable that the more proactive, and thus likely more “technologically aware,” outside counsel stand to benefit from these changes by gaining a larger share of business from ill-prepared outside counsel that will not be able to offer competitive and flexible solutions to their clients. While this “awareness” includes knowledge of prevalent e-discovery best practices and document review platforms to maximize efficiency, there are other factors to consider.

Even though “predictive coding” and “technology-assisted review” were initially considered buzzwords by many inside and outside counsel alike, they technologies have now matured into reliable analytic tools which can be applied to almost any case.

The next stage of e-discovery’s evolution is likely to be driven by [game-changing artificial intelligence-backed tools](#), which are slowly but surely going to become mainstream. Outside counsel will need to monitor the development of these tools closely to make sure they are ready to incorporate them into their practice and e-discovery offerings, as well as provide the level of service which their clients should expect.

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